



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 7, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*; CC Docket No. 94-102

Dear Commission Secretary:

Enclosed are an original and fifteen (15) copies of Opposition and Response to Petitions for Reconsideration filed by this office on behalf of the Texas Advisory Commission on State Emergency Communications ("TX-ACSEC"). Please distribute the filing as appropriate, and file mark the extra copy and return it in the enclosed self-addressed, stamped envelope.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Richard A. Muscat".

Richard A. Muscat
Assistant Attorney General
State Bar No. 14741550
Counsel for TX-ACSEC

No. of Copies rec'd 02 15
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of

**Revision of the Commission's
Rules to Ensure Compatibility
with Enhanced 911 Emergency
Calling Systems**

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CC Docket No. 94-102

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OPPOSITION AND RESPONSE TO PETITIONS FOR RECONSIDERATION

**TEXAS ADVISORY COMMISSION ON
STATE EMERGENCY COMMUNICATIONS**

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

THOMAS P. PERKINS JR.
Chief, Consumer Protection Division

RUPACO T. GONZÁLEZ JR.
Chief, Public Agency Representation Section
Assistant Attorney General
State Bar No. 08131690

RICHARD A. MUSCAT
Assistant Attorney General
State Bar No. 14741550
Public Agency Representation Section
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Voice: (512) 475-4169
Fax: (512) 322-9114

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CC Docket No. 94-102

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To: The Commission

OPPOSITION AND RESPONSE TO PETITIONS FOR RECONSIDERATION

**NOW COMES THE TEXAS ADVISORY COMMISSION ON STATE
EMERGENCY COMMUNICATIONS (TX-ACSEC), by and through the Office of the
Attorney General of Texas, and submits this OPPOSITION AND RESPONSE TO
PETITIONS FOR RECONSIDERATION to the Commission's Report and Order (R&O) in
CC Docket No. 94-102.¹**

I.

SUMMARY OF OPPOSITION AND RESPONSE

The Commission's adoption of the Consensus Agreement struck the appropriate balance on the major issues in this proceeding. The Commission should not modify its decisions on those issues, for the following reasons:

- Petitions for reconsideration that request the Commission reconsider the limitation of liability issue are without merit. It is not essential to preempt state tort law to achieve

¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, FCC 96-264, Report and Order and Further Notice of Proposed Rulemaking (rel. July 26, 1996).

the Commission's goals in this proceeding, and the Commission does not need to require states to treat wireless carriers equally. The entities against clarifying that state 9-1-1 limitation of liability protections apply equally to wireless carriers -- to the extent they have not already been clarified -- are some wireless carriers still wanting preferential, unequal treatment as far as state and local funding mechanisms for 9-1-1 service.

- Petitions for reconsideration that request establishing a cost recovery mechanism from all telecommunications consumers for wireless E9-1-1 should be rejected. Such a funding mechanism could be counter-productive and potentially disrupt the existing state and local 9-1-1 funding mechanisms, and would be unfair to wireline consumers.
- Petitions for reconsideration suggesting certain modifications to Incumbent Local Exchange Company (ILEC) networks as a basis for reconsideration have no merit. ILEC network modifications that may be necessary for wireless E9-1-1 service may also be necessary to accommodate other changes in the local telecommunications environment -- such as, local wireline competition, interim and permanent long-term number portability, and Number Plan Area (NPA) splits. State public utility commissions can appropriately address any ILEC network modifications that may be necessary, and those state commissions can ensure that ILECs do not unreasonably charge other carriers and/or 9-1-1 Public Safety Answering Points (PSAPs) for any network modifications for which the ILEC is not otherwise being compensated.
- Petitions for reconsideration requesting the Commission modify the requirement that wireless carriers within one year must be capable of transmitting 9-1-1 calls from

individuals with speech or hearing disabilities through Text Telephone Devices (TTY) should be rejected.

II.

THE COMMISSION SHOULD NOT RECONSIDER THE LIMITATION OF LIABILITY ISSUE.

The Commission in the Report and Order concluded that “it is unnecessary to exempt providers of E911 service from liability for certain negligent acts” to implement wireless E9-1-1. R&O ¶ 99. The Commission further concluded that in order to legally take any action to preempt state tort law, the Commission would need to demonstrate that such is “essential to achieving the goals of the Communications Act.” R&O ¶ 100. In the petitions for reconsideration, some wireless carriers urge the Commission to treat wireless and wireline carriers equally with respect to limitations of liability and urge the Commission to require states to treat them equally. The Commission should not reconsider this issue. It is not essential to preempt state tort law, and the Commission does not need to require states to treat wireless carriers equally. The entities against clarifying that state 9-1-1 limitation of liability protections apply equally to wireless carriers -- to the extent they have not already been clarified -- are some wireless carriers still wanting preferential, unequal treatment as far as state and local funding mechanisms for 9-1-1 service.

AT&T Wireless Services disagrees with the Commission’s decision on the limitation of liability issue and argues:

[W]ireless carriers should be subject to the same “gross and wanton negligence” standard applied to wireline carriers by many states. In the alternative, the Commission should require that states treat wireless carriers the same as wireline carriers with respect to liability. Such parity is consistent with the statutory goal of according similar regulatory treatment to providers of functionally equivalent services. [footnotes omitted] (emphasis added)

Petition for Reconsideration of AT&T Wireless Services, Inc. at p. 7. Some other carriers make similar arguments. See, Petition for Partial Reconsideration of Ameritech at pp. 10-16; Petition for Reconsideration of BellSouth Corporation at pp. 9-10; Petition for Reconsideration and/or Clarification of Southwestern Bell Mobile Systems, Inc. (SBMS) at pp. 8-11.²

TX-ACSEC agrees that wireline and wireless carriers should be treated equally. TX-ACSEC also agrees that wireline and wireless services are “functionally equivalent services” as far as 9-1-1 emergency service. In fact, TX-ACSEC has specifically determined that those services are “equivalent” and should be treated “equally” for purposes of 9-1-1 service and that wireless carriers in Texas are covered by the same broad statutory limitation of liability protections afforded wireline carriers. TX-ACSEC’s determination has been upheld by a Texas state district court. Wireless carriers are currently appealing the district court’s judgment.³

² SBMS correctly notes that PSAPs in certain states may lack the legal authority to hold a carrier harmless contractually. See, Op. Tex. Att’y Gen. No. MW-475 (1982) (to the extent a contractual indemnity clause merely reinforces obligations the state entity has legally undertaken elsewhere and does not expand or increase the entity’s liability or its scope of liability, it is harmless surplusage; but to the extent it purports to create liability or potential liability beyond the entity’s statutory or constitutional powers to incur liability, it is invalid). The contractual indemnity issue has sometimes been “resolved” in Texas by adding qualifying language to the indemnity clause -- such as, “to the extent otherwise authorized by law.” For instance, the Public Utility Commission of Texas (TX-PUC) approved a limitation of liability provision in Southwestern Bell Telephone Company’s (SWBT’s) 9-1-1 tariff that begins with “[t]o the extent allowed by law.” SWBT, General Exchange Tariff, Section 34, Sheet 6. The Texas Legislature subsequently took the limitation of liability protections from SWBT’s 9-1-1 tariff and incorporated them into TX-ACSEC’s enabling statute for service providers in Texas.

³ The limitation of liability protection in TX-ACSEC’s statute provides as follows:
A service provider of telecommunications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an

TX-ACSEC, notwithstanding the favorable district court judgment, has recently suggested a list of items for potential clarification to the Texas House of Representatives Committee on Public Safety, for legislative attention during the next Regular Session of the Texas Legislature beginning in January 1997. The first item on the list is that the “9-1-1 limitations of liability provisions should be clarified to apply to all service providers of telecommunications involved in providing 9-1-1 service, regardless of service provider or area [in Texas].”⁴

officer or employee of a service provider of telecommunications service involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Tex. Health & Safety Code Ann. § 771.053(a) (Vernon 1992). The state district court judge in the wireless carrier’s declaratory judgment action reasoned:

The legislature didn’t have any idea, though, who might be paying the fee for the equivalent local exchange access lines because the legislature at that point didn’t know if there would be any equivalent local exchange access line or who they were. That was something the Advisory Commission was going to determine through rule making.

Once the Advisory Commission determined that through rule making then you have to go to .073, which is how those fees get collected. So, the legislature clearly had a concept of service provider that was broader than merely the local exchange service providers. You see that both in the fact that the surcharge is imposed on service providers who aren’t local exchange service providers, **that liability protection, and .053 has provided to service providers who aren’t local exchange service providers.** And I think also that the equivalent local exchange line fee can be imposed on service providers who aren’t local exchange service providers.

Wireless Providers of Texas v. Advisory Commission on State Emergency Communications, No. 95-15818 Statement of Facts at p. 15, line 10 through p. 16, line 3 (emphasis added). (For the Commission’s convenience, Appendix One contains the district court judge’s entire discussion.)

⁴ See, Appendix Two to this pleading.

Again, it is not essential for the Commission to preempt state tort law to achieve its goals in this proceeding, and the Commission does not need to require states to treat wireless carriers equally. The Commission should not permit some wireless carriers to use the limitation of liability issue as a basis for further delaying implementation of wireless E9-1-1. The Commission should deny the petitions for reconsideration on the limitation of liability issue.

III.

THE COMMISSION SHOULD DECLINE TO RECONSIDER ITS DECISION NOT TO ADOPT A COST RECOVERY MECHANISM AT THIS TIME.

The Commission concluded that although it made wireless E9-1-1 implementation contingent upon the adoption of state cost recovery mechanisms for carriers, it would not prescribe a particular cost recovery methodology at this time, for two reasons. First, the record did not demonstrate a need for such action. R&O ¶ 89.⁵ Second, Commission action at this time might be counter-productive to the goal of implementing E9-1-1. R&O ¶ 90. On reconsideration, AT&T Wireless Services suggests that it is unfair for the Commission to leave the development of appropriate cost recovery mechanisms to the states. Petition for Reconsideration of AT&T Wireless Services, Inc. at p. 2.⁶ AT&T Wireless Services

⁵ The Commission noted:

No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services. Nor is there any evidence of state or local officials attempting to prevent a carrier from doing so.

R&O ¶89.

⁶ See also, Petition for Reconsideration of Primeco Personal Communications, L.P. at p. 7 (suggesting that it “does not agree that cost recovery should be left to the individual states” and that “wireless carriers should not be required to contribute more than their pro rata share toward E9-1-1 funding”).

proposes that “the Commission should commence a proceeding to address methods for cost recovery that will ensure that all industry segments contribute to the development of the wireless E911 infrastructure.” Id. at p. 4. AT&T Wireless Services’ rationale for its position is that wireless E9-1-1 services “benefit society as a whole as well as wireless subscribers, and their costs should be allocated accordingly.” Id. at p. 2.

The Commission appropriately declined to adopt a cost recovery mechanism at this time for the reason that it may be counter-productive and may detrimentally impact existing state and local 9-1-1 funding mechanisms. Charging all consumers for wireless E9-1-1, moreover, would be unfair. The record in this proceeding clearly demonstrates the extent to which wireless consumers use 9-1-1 service, the impact of that use on PSAPs, and that safety is a main reason consumers purchase wireless service from wireless carriers.⁷ Further

⁷ In the Report and Order, the Commission appropriately noted:

Although 911 was originally developed for wireline telephones, wireless customers place a large and increasing portion of 911 calls. According to the Cellular Telecommunications Industry Association (CTIA), virtually all cellular carriers today provide basic 911 service or some close alternative. In 1994, almost 18 million wireless calls were made to 911 and other public service numbers. The number of such calls is growing rapidly, spurred by the rapid growth in cellular subscribers. The total number of cellular subscribers in the United States currently exceeds 33 million, and 9.6 million new subscribers were added in 1995 alone. The roll-out of broadband Personal Communications Service (PCS), now underway, will increase the number of mobile phones and wireless 911 calls. With this growing popularity of mobile communications has come a recognition on the part of wireless customers that their phone provides them with a valuable communications link in emergencies. According to a recent survey, for example, 62 percent of cellular users cited safety and security as their main reason for purchasing a mobile phone. [footnotes omitted]

R&O ¶6 .

burdening wireline consumers to compensate wireless carriers is unfair.⁸

The Commission appropriately rejected establishing a cost recovery mechanisms at this time, for the reasons expressed in the Report and Order. The proposal to charge all consumers for wireless E9-1-1 is unfair and should be rejected. The Commission should deny the petitions for reconsideration on the funding issue.

IV.

THE COMMISSION APPROPRIATELY CONCLUDED THAT STATE PUBLIC UTILITY COMMISSIONS SHOULD ADDRESS ILEC ISSUES.

Several petitioners argue that the Commission needs to modify its adoption of the Consensus Agreement because selective routers in the ILECs' 9-1-1 tandems may need to be modified to accommodate additional digits. See, e.g., Petition for Reconsideration of Bell South Corporation at pp. 6-7 (“[n]ew selective routers must be installed in LEC networks before 10 digit ANI and pseudo-ANI can be passed to PSAPs using SS7 or MF protocols”); Petition for Partial Reconsideration of Ameritech at p. 16 (“wireless carriers should not be saddled with the costs of upgrading local exchange carrier facilities”). ILEC network

⁸ Omnipoint wants wireless carriers to be compensated in advance of providing any E9-1-1 service. Petition for Reconsideration and Clarification Omnipoint Communications, Inc. at pp. 19-20 (suggesting that “if PCS operators are forced to finance PSAPs, they should be compensated for this loss at their internal cost of capital”). Funding wireless carriers in advance would raise issues about how to share any profits to wireless carriers from the network upgrades. The Telecommunications Industry Association (TIA) explains that wireless carriers “have continually requested reliable ALI systems in order to implement a wide variety of new services, including location tracking for route mapping, zone-based rate plans, and services providing information on the nearest available gas station, hospital, etc.” (Petition for Reconsideration and Clarification of the Mobile and Personal Communications Division of the Telecommunications Industry Association at p. 17, footnote 21.) Furthermore, a wireless carrier that is funded in advance could go out of business prior to ever providing any wireless E9-1-1 service to the PSAP.

modifications that may be necessary for wireless E9-1-1 service, however, may also be necessary to accommodate other changes in the local telecommunications environment -- such as, local wireline competition, interim and permanent long-term number portability, and Number Plan Area (NPA) splits. State public utility commissions can appropriately address ILEC network modifications that may be necessary, and those state commissions can ensure that ILECs do not unreasonably charge other carriers and/or PSAPs for any network modifications for which the ILEC is not otherwise being compensated.⁹ The Commission should not reconsider this issue.

V.

THE COMMISSION SHOULD NOT MODIFY THE TTY REQUIREMENT.

The Commission appropriately recognized that “TTY access to 9-1-1 services is important to the public safety of the 30 million” people in the United States with hearing and speech disabilities. R&O ¶ 51.¹⁰ The Commission in the Report and Order adopted the Consensus Agreement and required that covered wireless carriers must transmit TTY calls to 9-1-1 service within one year after the effective date of the rule. R&O ¶ 50. The Commission’s rule 20.1(c) provides:

⁹ The TX-PUC is currently considering the costing and pricing of 9-1-1 emergency services in arbitrations between ILECs and new wireline carriers under the Federal Telecommunications Act of 1996. If the costs of ILEC network modifications to accommodate additional digits becomes an issue in Texas, the TX-PUC will address that issue appropriately. Other state utility commissions can be trusted to do the same.

¹⁰ The Federal Telecommunications Act of 1996 requires manufacturers of telecommunications equipment or providers of telecommunications services to ensure that the equipment or services are accessible and usable by individuals with disabilities, if readily achievable. R&O ¶ 47. “Readily achievable” has the meaning given to it in 42 U.S.C. § 12181(9).

As of [one year after the effective date of the rule], licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices.

Omnipoint proposes modifying the rule as follows:¹¹

As of [one year after the effective date of the rule], licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than normal speech over a mobile radio handset[s, ~~e.g., through the use of Text Telephone Devices~~]. Acceptable methods of demonstrating compliance with this requirement include handset keypad-originated text messages or data services compliant with international standards. To the extent reasonably feasible with the technology implemented by the operator, analog TTY service shall also be supported.

Petition for Reconsideration and Clarification of Omnipoint Communications, Inc. at p. 8-

9.¹² The Commission should reject these modifications.

The proposed modifications so water down the TTY requirement as to no longer make it a requirement. The “[t]o the extent reasonably feasible with the technology implemented by the operator” language essentially gives the wireless carrier an easy “out” even if complying with the Commission’s rule is “readily achievable.” The “acceptable methods of demonstrating compliance” language is also a further step in the wrong direction. Wireless carriers’ networks should attempt to meet the TTY specifications that apply to all other telecommunications carriers, rather than modifying TTY specifications to meet network specifications of individual wireless carriers.

¹¹ Omnipoint’s proposed additional language is underlined and proposed deletions are in overstrike.

¹² See also, Petition for Reconsideration and Clarification of the Mobile and Personal Communications Division of the Telecommunications Industry Association at p. 15.

The proposed modifications to the TTY requirement are steps in the wrong direction that will halt improvements being made toward an equal playing field in telecommunications services for all people in the United States. The Commission should deny the petitions for reconsideration on this issue.

VI.

CONCLUSION

For the reasons expressed above, the Commission should deny the petitions for reconsideration on the issues addressed herein.

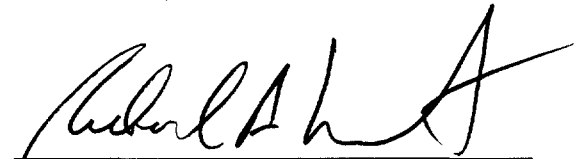
Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

THOMAS P. PERKINS JR.
Chief, Consumer Protection Division

RUPACO T. GONZÁLEZ JR.
Chief, Public Agency Representation Section
Assistant Attorney General
State Bar No. 08131690

A handwritten signature in black ink, appearing to read "Richard A. Muscat", written over a horizontal line.

RICHARD A. MUSCAT
Assistant Attorney General
State Bar No. 14741550
Public Agency Representation Section
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Voice: (512) 475-4169
Fax: (512) 322-9114

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon all required parties, by prepaid United States mail, overnight mail, or via fax, on this 7th day of October, 1996.



RICHARD A. MUSCAT

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APPENDIX 1

Rec'd 3/14/96

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No. 95-15818

WIRELESS PROVIDERS OF TEXAS * IN THE DISTRICT COURT OF
*
VS. *
* TRAVIS COUNTY, T E X A S
*
ADVISORY COMMISSION ON *
STATE EMERGENCY *
COMMUNICATIONS * 261ST JUDICIAL DISTRICT

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STATEMENT OF FACTS

- - - - -

BEFORE THE HONORABLE F. SCOTT MCCOWN, JUDGE PRESIDING

- - - - -

APPEARANCES

ATTORNEY FOR THE PLAINTIFF:

MR. KIM E. BRIGHTWELL and MR. MICHAEL J. TOMSU, (Vinson
& Elkins, L.L.P.), One American Center, 600 Congress
Avenue, Suite 2700, Austin, Texas 78701

ATTORNEY FOR THE PLAINTIFF INTERVENOR MCCAW:

MS. DINEEN J. MAJCHER, (Smith, Majcher & Mudge, L.L.P.),
816 Congress Avenue, Suite 1270, Austin, Texas 78701

ATTORNEY FOR PLAINTIFF INTERVENOR MID-TEX CELLULAR:

MR. DON R. RICHARDS, (McWhorter, Cobb & Johnson,
L.L.P.), 1722 Broadway, Lubbock, Texas 79408

ATTORNEY FOR PLAINTIFF INTERVENOR LAR-TEX CELLULAR:

MR. STEVEN D. MOORE, (Small, Craig & Werkenthin, P.C.),
100 Congress Avenue, Suite 1100, Austin, Texas 78701

ATTORNEY FOR PLAINTIFF INTERVENOR SW BELL MOBILE SYSTEMS:

MR. GLEN A. GLASS, 17330 Preston Road, Suite 100A,
Dallas, Texas 75252

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ATTORNEY FOR THE DEFENDANT:

MR. RICHARD A. MUSCAT and MR. RUPACO T. GONZALEZ, JR.,
Assistants Attorney General, P.O. Box 12548, Capitol
Station, Austin, Texas 78711-2548

ATTORNEY FOR THE DEFENDANT INTERVENOR:

MR. KEITH RUTHERFORD, (Arnold, White & Durkee), 600
Congress Avenue, Austin, Texas 78701

- - - - -

BE IT REMEMBERED, that on the 23rd day of
February, 1996, the above entitled and numbered cause came
on for hearing before the Honorable F. Scott McCown, Judge
Presiding, whereupon the following proceedings were had:

D O C U M E N T A R Y E V I D E N C E

Plaintiff's Exhibits

		<u>MRKD.</u>	<u>OFRD.</u>	<u>ADMTD.</u>
1.	HB 1955	2	6	6
2.	SB 1164	2	6	6
3.	"Proposed Rules" - TexReg	2	6	6
4.	Commission Minutes - 3/23/94	2	6	6
5.	Commission Minutes - 7/6/94	2	6	6
6.	Commission Minutes - 11/30/94	2	6	6
7.	ACSEC Committee Meeting	2	6	6
8.	Letter - 11/21/95	2	6	6
9.	Minutes - Board of Managers 911 Nortex	2	6	6

Defendant's Exhibits

1.	Brief "Position in Support"	7	8	8
2.	ACSEC Minutes 11/15/95	7	8	8
3.	Midland Emergency Comm. Dist.	9	9	9

1 THE COURT: Good afternoon. We're
2 here in the Wireless Providers of Texas, as plaintiffs,
3 versus the Advisory Commission on State Emergency
4 Communications, as defendant.

5 And who is appearing for the plaintiffs?

6 MR. BRIGHTWELL: Your Honor, I'm Kim
7 Brightwell, here with Mike Tomsu of Vinson, Elkins. We
8 represent some of the plaintiffs, GTE Mobilnet Austin and
9 Houston, Sprint Cellular and Contel Cellular.

10 MS. MAJCHER: Good afternoon, Your
11 Honor, I'm Dineen Majcher on behalf of AT&T Wireless and
12 McCaw Cellular, subsidiaries.

13 MR. MOORE: Your Honor, Steve Moore,
14 I'm here on behalf of the United States Cellular
15 subsidiaries and Century Telecommunications subsidiaries
16 operating in Texas.

17 MR. GLASS: I'm Glenn Glass, I'm
18 appearing on behalf of Southwestern Bell Mobile Systems,
19 Incorporated.

20 MR. RICHARDS: Your Honor, I'm Don
21 Richards, McWhorter, Cobb & Johnson, from Lubbock. I'm
22 representing five of the rural telephone rural cellular
23 providers in West Texas, Mid-Tex Poka-Lambro, ETEX
24 Cellular and RSA #5 South.

25 THE COURT: And for the defendant?

1 MR. MUSCAT: Your Honor, Richard
2 Muscat, Attorney General's office. With me, co-counsel,
3 Rupaco Gonzalez.

4 THE COURT: All right. And.

5 MR. RUTHERFORD: Your Honor, excuse
6 me, I'm Keith Rutherford, Arnold, White & Durkee, also
7 appearing on behalf of the intervenor Greater Harris
8 County 911 Emergency District. With me back, in the
9 courtroom, is Maria Flores of our office and Lavergne
10 Schwender of the Harris County attorneys office.

11 THE COURT: Okay. So that's a
12 defendant intervenor?

13 MR. MOORE: Yes, sir.

14 THE COURT: So that's plaintiffs and
15 plaintiff intervenors and defendant and
16 defendant-intervenors.

17 Okay. And we're here today on what, Mr. Brightwell?

18 MR. BRIGHTWELL: Your Honor, it's an
19 action to declare a rule invalid under the Administrative
20 Procedure Act seeking a declaration that a rule adopted by
21 the Advisory Commission exceeds their statutory authority.

22 THE COURT: But all you're asking for
23 is a declaration?

24 MR. BRIGHTWELL: Your Honor,
25 that's -- we initially had asked for a declaration that it

1 was invalid and also an injunction, but in their briefing
2 the defendant has stipulated that if the court declares it
3 invalid they will not try to enforce it. They may appeal,
4 but they would not try to enforce it pending the appeal.

5 THE COURT: All right. So you're
6 looking just for declaration of that. Okay. And are
7 you-all going to have -- how long is the evidentiary
8 presentation?

9 MR. BRIGHTWELL: I would suspect it
10 would be less than 15 minutes, probably quite a bit less.
11 We pretty well stipulated to the evidence that we intend
12 to put in.

13 THE COURT: Okay. Why don't -- if
14 you-all don't mind, why don't you waive opening
15 statements, let's make the evidentiary record, then we can
16 have lengthier arguments. Is that agreeable?

17 MR. BRIGHTWELL: That's agreeable
18 with us, Your Honor.

19 MR. MUSCAT: Agreeable with us, Your
20 Honor.

21 THE COURT: Why don't you go ahead
22 and present your exhibits and call your witness and --

23 MR. BRIGHTWELL: Your Honor, we
24 brought the file up and the stipulation that the parties
25 agreed to is on top of the file there. Your Honor, Tabs A

1 through I of that stipulation --

2 THE COURT: Excuse me just a second.

3 (Pause.

4 THE COURT: Go ahead.

5 MR. BRIGHTWELL: Tabs A through I of
6 that stipulation are -- correspond to Plaintiff's Exhibits
7 1 through 9.

8 THE COURT: All right.

9 MR. BRIGHTWELL: And they have --
10 pursuant to stipulation, authenticity has been established
11 of them.

12 THE COURT: All right. Well
13 Plaintiff's 1 through 9 then are admitted into evidence.

14 MR. RUTHERFORD: Objection, Your
15 Honor, as far as we have stipulated they are true, correct
16 copies, but we don't necessarily believe that Exhibit I,
17 which is attached to the stipulation, should be admitted
18 as evidence. We believe that that is an irrelevant
19 document to the hearing that we're having here today.

20 These are certified minutes from a district up in
21 north Texas, in Wichita Falls. The action here today is
22 between cellular carriers and the State Advisory
23 Commission and so as far as anything that went on in a
24 district's board of manager's minutes, we believe that's
25 irrelevant.

1 Furthermore, the document itself within it contains
2 substantial hearsay which shouldn't be permitted even if
3 the document as a whole had some relevance to the issues
4 in the case.

5 THE COURT: Any response?

6 MR. BRIGHTWELL: Your Honor, I think
7 he accurately described what Exhibit I is. The purpose of
8 the offer is to show what transpired at the meeting of
9 the -- of that particular district and it reflects actions
10 that were taken by the Advisory Commission, the defendant
11 in this case. Frankly, it is more relevant to some issues
12 that were raised by the defendants in their briefing,
13 although it maybe that they don't offer evidence on that
14 point in this proceeding, in which case it would not be
15 as -- it would not be as relevant.

16 THE COURT: Objection overruled. 1
17 through 9 is admitted.

18 (Whereupon, Plaintiff's
19 (Exhibit No. 1-9 were admitted
20 (into evidence.

21 THE COURT: Okay. And the court
22 takes judicial notice then of the agreed stipulations of
23 fact that have been filed with the clerk.

24 What else do you have, Mr. Brightwell?

25 MR. BRIGHTWELL: You may have just

1 taken care -- only other two things I wanted to do, Your
2 Honor, was to make sure of record stipulations 8 and 9 are
3 factual stipulations that I wanted to make sure were in
4 the record as opposed to just authenticity stipulations.
5 If I might read those into the record or --

6 THE COURT: All right.

7 MR. BRIGHTWELL: Stipulation 8
8 states, cellular carriers including plaintiffs, do not
9 operate under a certificate of public convenience and
10 necessity issued by the Public Utility Commission of
11 Texas.

12 Stipulation 9 is that the Advisory Commission on
13 State Emergency Communications notified cellular carriers,
14 including the plaintiffs, that the adoption of amendments
15 to rule 255.4 obligated them to collect the 911 service
16 fee from their customers.

17 With that, Your Honor, the plaintiffs rest in terms
18 of evidentiary presentation.

19 THE COURT: Okay. Is that true for
20 all the plaintiffs?

21 MS. MAJCHER: Yes, Your Honor.

22 THE COURT: Well, then let's move to
23 the defendants.

24 MR. MUSCAT: Your Honor, defendant
25 has two exhibits on the agreed stipulated numbers 11 and